IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.802 of 2000.

Date of decision:28.12.2005.

Bishan Dass Chaudhary ….**Petitioner.**

Versus

State of H.P. & Others. ….**Respondents.**

Coram

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Petitioiner: **Mr.Ashwani K.Sharma, Advocate.**

For Respondent No.1: **Mr.M.S. Chandel, Advocate General with Mr.Ashok Chaudhary, Additional Advocate General.**

For Respondent No.2: **None.**

For Respondent No.3: **Mr.B.N. Gupta, Advocate.**

K C SOOD,J.(Oral).

The petitioner retired as Additional Registrar-cum-Secretary to Hon'ble the Chief Justice of this Court on 2nd April, 1996. It so happened that the pay scale for the post of the Additional Registrar-cum-Secretary to Hon'ble the Chief Justice was revised to the pay scale of Rs.12000-16450 w.e.f. Ist January, 1996 on the recommendations of the 5th Pay Commission. The basic pay of the petitioner was fixed at Rs.13,900/- on the day he retired i.e. 2nd April, 1996.

The grievance of the petitioner is that under the Pension Rules read with Government of India decision

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

dated 27th October, 1997 vide O.M.No.F.45/86/97-P.& P.W.(A)-Part-1 conveyed vide O.M.No.45/10/98-P.&P.W.(A), dated the 17th December, 1998, the petitioner was entitled for full pension. Therefore, his pension could not have been fixed less than 50% of the minimum of the revised scale of pay granted w.e.f. Ist January, 1996 for the post held by him at the time of his retirement. As his last pay drawn was fixed at Rs.13,900/-, therefore, he was entitled to pension of Rs.6950/-, instead his pension was fixed at Rs.6612/- which is contrary to the Pension Rules.

The case of the Respondent-State as spelled out in its return to the amended writ petition is that the Government follows Central Civil Services Pension Rules, 1972 and any amendment to these Rules is applicable to the Government unless decided to the contrary by the Government of Himachal Pradesh by making formal amendment to the Central Civil Service (Pension) Rules, 1972, as applicable to the employees of the Himachal Pradesh Government under Article 309 of the Constitution. The Respondent-State further say that instructions issued by the Government of India by way of Office Memoranda, merely serve as guidelines to the Government of Himachal Pradesh which has a discretion to adopt or not to adopt these instructions in public interest after weighing all aspects of the matter including the financial implications.

The relevant part reads:

"It also issues instructions which are either clarificatory in nature or have the effect of granting additional benefits to its pensioners. Very often such instructions issued by way of Office Memoranda lay down the method of calculation of basic pension as well as allowances etc. while the rules are silent, or convey the executive decisions of the Government of India in respect of pension matters. These decisions, however, do not have the effect of amendment in the CCS (Pension) Rules. As we are following the Central Civil Services (Pension) Rules, 1972, any amendment to these rules is applicable to the Government unless decided to the contrary by the Government of H.P. by formal amendment to the Central Civil Services (Pension) Rules, 1972 as applicable to employees of H.P. Government, under Article 309 of the Constitution. However, the instructions issued by the Government of India by way of office Memoranda, merely serve as guidelines to the Government of H.P., which has the discretion to adopt or not to adopt these instructions in public interest after weighing all aspects of the matter including the financial implications involved. It is also submitted that the employees as well as the Civil Services pensioners of the State are among the best paid in the contrary".

The Government of India's decision dated 27th October, 1997 as conveyed on 17th December, 1998 was clarificatory in nature, in view of the revised pay scales granted to the employees on the recommendations of the 5th Pay Commission. No conscious decision has been brought on record by the Respondent-State where it may even show remotely that any decision, not to follow the decision/instruction/modification of sub-rule 2 of Rule 49 of the Central Government, was taken by the State Government. The decision of the Government of India which provides for the calculation of minimum and maximum amount of pension reads:-

> "**(4) Minimum and maximum amount of pension enhanced from 1.1.996.-** Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be, subject to a minimum of Rs.1,275 per month and a maximum of up to 50% of the highest pay applicable in the Central Government, which is Rs.30,000 per month since Ist January, 1996, but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from Ist January, 1996 for the post last held by the employee at the time of his retirement. However, such pension will be suitably reduced pro rata, where the pensioner has less than the maximum required service for full pension as per the rule (Rule 49 of CCS (Pension) Rules, 1972) applicable to the pensioner as on the date of his/her superannuation/ retirement and in no case it will be less than Rs.1,275 p.m. Accordingly, the

provisions of Clauses (a) and (b) of sub-rule (2) of Rule 49 of the Pension Rules shall stand modified. The other provisions contained in Rule 49 shall continue to apply.

The revised provisions as per these orders shall apply to Government servants who retire on or after 1-1-1996".

The petitioner admittedly is entitled to full pension. Therefore, taking into consideration the decision of the Government of India and the fact that the State Government had not taken any contrary decision, the petitioner was entitled to the fixation of his pension in terms of the decision of the Government of India i.e. 50% of the last pay drawn by him.

For the reasons recorded above, the petition is allowed. The respondents are directed to re-calculate the pension of the petitioner w.e.f. the date of his retirement in the light of the observations made hereinabove and to pay the arrears to the petitioner within six weeks from today, failing which the petitioner shall be entitled to interest at the rate of 12% per annum from the date he was entitled to such pension.

No costs.

December 28, 2005. **(K C Sood)**
(aks) **Judge.**